Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1970

No. 1149

WILLIAM J. DAVENPORT,

Petitioner,

vs.

CITY RENT and REHABILITATION ADMINISTRATION of the City of New York, JOHN V. LINDSAY, as Mayor of the City of New York,

Respondents.

PETITIONER'S REPLY BRIEF TO RESPONDENTS' BRIEF IN OPPOSITION TO CERTIORARI

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Statement

Petitioner seeks a writ of certiorari to review an order of the United States Court of Appeals for the Second Circuit dated September 24, 1970 which without opinion dismissed his appeal from a lower court dismissal without trial of his complaint (Tenney, J.), in the United States District Court for the Second Southern District in New York.

The dismissal of the complaint in the lower court was based on "Res Judicata" of a prior

application to the court which had similarly been dismissed without trial or consideration of the issues on a procedural cross motion of respondent counsel.

Question Presented

All of the questions hereto involved seek to define the Police Authority limits of the New York Rent Administrators Authority, for each issue hereto presented petitioner has complied with the terms of the then effective Rent Control Laws, and the Rent Administrator has assumed authority to supercede the specifications of legislative provision therein, and has effectively superceded the constitutionally secured rights of petitioner, alleging that such is his authority under the involved Rent Control Law, which is a Police Authority Law of the State of New York.

Facts

The facts in this case are fully stated in the original brief of petitioner, the statement alleging to be fact presented in the respondents "brief in opposition to petition for certiorari" are a perverted misrepresentation, constructed by six experienced attorneys employed by the New York City government in the Office of the Corporation Counsel of New York, who are pivy to the full record, and individually fully aware of the involved law, specializing thereto as both agents of government and agents of this court.

Such deliberate misstatement of truth is not only an affront to the dignity of this court but is criminal fraud.

Argument

Point I

PETITIONER IS IN THIS COURT SEEKING CORRECTION OF ERRORS OF THE PRIOR COURTS.

These errors all appear to have originated, developed, and matured in the same manner. The courts have accepted the presentation of respondent counsel as proven truth from an agent of government, and have been betrayed by false presentation, which in effect was the accused rendering judgment upon himself, through his privileged position before the courts. The prior courts in no instance indicate cognition of the questions presented, or the evident facts of the case, however those courts are not here in question, except that this court should not be bound by the prior errors of other jurisdicial procedure.

Petitioner presents this brief solely to prevent a repetition of the same error, and seeks to point out these misrepresentations which are the sole presentation of the respondent brief:

(a) Respondents' "Question Presented" states that petitioner had litigated the same issue previously. The statement is an intentional falsehood, petitioner has sought to litigate the same questions previously, and been dismissed without trial on respondents' cross-motion. The questions were not considered on their merit by the court.

(b) Respondent seeks to imply applicability of

the "New York City Rent Control Law, N.Y.C. Adm. Code, Sec. Y-51-3.0.", which did not exist at the time of the exemptions or decontrolls of the subject apartments, which were decontrolled by statutory provision of the New York State Law between 1955 and 1960, and the New York City Rent Administration and Administrative code did not exist prior to 1962, and does not in fact apply.

(c) Respondent counsel falsely states that "Proceedings before the New York City Rent Administrator" occurred. In fact of record, all action was solely effected on the Rent Administrator's desk in secret. Usage of the term proceeding is a travesty on the law, the New York City Rent Administrator not only actively ordered procedures seeking adverse testimony, but denied petitioners request for a hearing that he might have opportunity to examine and answer the charges. Further, having initiated the facade with a "Notice of Commencement of Proceedings to Determine Fact", in which was stated the intended findings and orders to be made. Which finding and orders were subsequently issued.

(d) Respondents' allegation of the issue of argument, as the constitutionality of rent controls is the deliberate, intentional, contrived, contumacious lie, which respondent counsel has used previously to misdirect prior courts. Petitioner has in no complaint contested the principle of rent control on constitutional grounds, but of fact and necessity has contested administrative acts claiming authority of the constitution and the rent control law which are contrary to both.

Petitioner has preferred to raise the challenge on the constitutional grounds. Thereto; in petitioner's complaint, 68 CIV 4984, par. 38 reads:

> "That defendants' Rent Administration and Administrator have, for the past twenty-two years, been either criminally unaware of the requirements of law or incapable of complying with the requirements of law as needed, all of which creates a complete experiment at the expense of the public, which is contrary to the intent, spirit, word or purpose of the involved law, and in fact the law has not been administered and the benefits of the law have not been available to the first party interested, specifically the landlord of rent controlled property."

Further, in this instant action, 70 CIV 1011 a portion of page 1 reads:

> "This action arises before this court as an urgent appeal for the relief of law in that plaintiff has complied with the Rent Control Laws of the State of New York and is denied relief provided therein by Administrative action of the responsible authority...." (sic, the rent administrator);

further a portion of page 3 of the same document reads:

> "All of the foregoing, creates a pattern of actual existence of purposes effected contradictory to the intent of the Authority of the Rent Control Law, while the pattern created

also contains official recognition of maintenance of the housing market economy contrary to the requirements of law, and statements by the Administrative officials denying knowledge of what the market is, that they are responsible to effect and maintain."

(e) Respondent finally seeks to allege that "No substantial issues...." have been presented in this litigation. The blunt "gut" issue presented here is whether law is to be administered and maintained, and whether the courts will hear the complaints of the citizenry and protect them against misuse of government authority and power; or whether agents of government may perpetrate any public fraud, misusing as they chose the authority and power of government by simply falsifying the records, acting in secrecy, and denying openly visible fact of record to contravene the law with tacit approval of the courts. The question is crucial to the times; being misuse of police authority by agents of government for unintended and unauthorized purposes to repress the lawful acts of the general citizenry. It is a regretful but true fact of current history that otherwise decent segments of the American public are already in armed revolt.

It is also fact that petitioner is presently defendant in a secondary action relative to this complaint which is also in these federal courts as 70 CIV 3878, and which is a mortgage foreclosure action, developed in consequence of the hereto in contest Rent Administrator's orders; and relative whereto petitioner has suffered not less than thirty thousand dollars

loss and may suffer potential loss of several hundred thousand dollars.

The facts now available of record before this court, in this action, establish evidence of a conspiracy of total fraud, perpetrated by not less than six top level officials of the New York City Rent Administration, various subordinates, and at least eight attorneys from the office of the Corporation Counsel of the City of New York who have knowingly misrepresented both fact and law before the courts seeking to hide the crime.

Further such fraud is widespread, the findings of an official Rent Administration survey by the Rand Corporation of California indicate that rent control forces abandonment of over three thousand buildings annually. Petitioner estimates that over one billion dollars annually in real property is stolen in this manner. The publicly known and visible evidence is that Rent Administration policy seeks to destroy the economy of selected areas and properties for the purpose of forcing redevelopment as an economic necessity. The only benefactors are the land speculators' pivy to the plans of the city authorities. These include controllers of political graft, the "hot" money of organized crime, and the large politically-connected real estate interests including the agents of the Rockefeller fortune.

Petitioner has been approached between 1954 and 1962 by agents of Spectrom, Inc; Jayven Inc.; and D.O.H.C. Inc., which are real estate firms employed by the Governor of New York State, Nelson A. Rockefeller, seeking to purchase the hereto involved property. The reason became public knowl-

edge several years ago, that New York City plans to remove the nearby "Third Avenue El" and construct a "Park Ave. Subway," which will totally change the character of the area, and the land values will jump by ten to fifty.

Although the entirety of the foregoing is not before the court for judgment, it should be recognized as pertinent background of fact that the present action provides more than adequate justification for a maximum of concern by this court.

Conclusion

This court should grant certiorari, and with the most urgent speed examine the question and issue presented, in the most intimate detail possible, to determine and order correction of widespread abuse and criminal misuse of this authority of law.

Respectfully submitted,

s/ William J. Davenport
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